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Later this defect was cured *ab initio* under statutory provision. *Held*, that the acts of the receiver are valid. *Matter of New York, W. & B. Ry. Co.*, 193 N. Y. 73. See NOTES, p. 369.

CORPORATIONS — STOCKHOLDERS: INDIVIDUAL LIABILITY TO CORPORATION AND CREDITORS — RIGHT OF SET-OFF. — The plaintiff obtained a judgment against the defendant corporation and the execution was returned *nulla bona*. A bill in equity was then brought to enforce a stockholder's liability for unpaid stock in satisfaction of the judgment. *Held*, that the stockholder may set off against such liability a *bona fide* indebtedness of the corporation to himself. *Austin Powder Co. v. Commercial Lead Co.*, 114 S. W. 67 (Mo., St. L. Ct. App.).

It is well settled that the liability of the stockholders on unpaid stock is an asset of an insolvent corporation available to the creditors through a bill in equity after the remedies at law have been exhausted without satisfaction. *Hickling v. Wilson*, 104 Ill. 54. And when proceedings are taken to wind up a corporation or to take an account of its assets for a rateable distribution among all the creditors, a stockholder cannot set off against his statutory liabilities or his liability on unpaid stock any debt of the corporation to himself. *Shickle v. Watts*, 94 Mo. 410, 418; *Matter of Empire City Bank*, 18 N. Y. 199, 227. To allow him to do so would be to give him a preference as creditor by reason merely of his position as stockholder. But where an individual judgment creditor is seeking equitable execution against the liability for unpaid stock as a corporation asset, it seems just to allow the stockholder to set-off such indebtedness; for the petitioning creditor is no more entitled to a preference than is the stockholder. *Christensen v. Colby*, 43 Hun (N. Y.) 362.

CRIMINAL LAW — TRIAL — PRESENCE OF ACCUSED IN CAPITAL CASE AT RENDITION OF VERDICT. — The accused, who was indicted for murder, was on bond. When the case was given to the jury he left the court room, and before his return the jury rendered a verdict of guilty of manslaughter. *Held*, that the receiving of the verdict in the absence of the prisoner is reversible error. *Sherrod v. State*, 47 So. 554 (Miss.).

In non-capital felonies it has been frequently held that the prisoner may waive his right to be present at the rendition of the verdict. *State v. Kelly*, 97 N. C. 404. *Contra*, *Prine v. Commonwealth*, 18 Pa. St. 103. The distinction taken by the court in the principal case between capital and other cases seems artificial. It is argued that the accused and the public are more interested in his life than in his liberty. But in neither case has the right to be present at the verdict any practical value; for a conclusion is reached before the jury returns. The arguments against waiver are essentially historical. One is that the court can have no jurisdiction over the accused if he is at large. *Andrews v. State*, 2 Sneed (Tenn.) 550. Another is that the jury ought to see the prisoner. *Rex v. Lad-singham*, T. Raym. 193. These considerations apply today with equally much or little force to capital and to non-capital crimes. One rule should, accordingly, cover both cases, and that rule is conceived to be the better which limits the opportunities for merely technical reversal. See 11 HARV. L. REV. 409; 15 *ibid.* 412.

DAMAGES — MEASURE OF DAMAGES — EXTENSION OF ENGLISH RULE IN CONTRACTS FOR SALE OF REALTY. — The plaintiff and the defendant made a contract whereby the defendant was to have free access to certain tips, to take and carry away therefrom, at a specified rate per ton, such quantity of slag as he might desire. The plaintiff was unable to perform, for want of title to the slag. In an action brought by him, the defendant counterclaimed for this breach. The trial court found that the slag had become part of the ground itself. *Held*, that the defendant can recover only nominal damages on his counterclaim. *Morgan v. Russell & Sons*, 25 T. L. R. 120 (Eng., K. B., Nov. 26, 1908).

In suits for breach of contract to sell land, the majority of courts in this